

BOARD OF ZONING APPEALS

Minutes

April 25, 2000

The meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m., on April 25, 2000, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: FLOYD PITTS, BICKLEY FOSTER, JOHN ROGERS, RANDY PHILLIPS, JAMES B. SKELTON, BRADELY TIDEMANN, and JAMES P. RUANE.

The following Planning Department staff members were present: Secretary, DALE MILLER, and Assistant Secretary, LISA VAN DE WATER. ROSE SIMMERING Recording Secretary, absent.

Also present SHARON DICKGRAFE, Law Department. Absent J.R. COX, Office of Central Inspection,

PITTS: Calls meeting to order. Asks for roll call.

VAN DE WATER: Completes the task and calls roll.

PITTS: The first item we have on the agenda I guess is approval of minutes of March 28, 2000. There has been an indication that we may want to go over those. Bickley did you have something in particular on that?

FOSTER: Mr. Chairman, and Lisa, I understand that this has or may go to court as I understand, the case which involved the 2.3 inch setback on that house. Is it already in court?

VAN DE WATER: We have been served a summons. The City of Wichita Board of Zoning and GSA Incorporated.

FOSTER: I just think we ought to take a few minutes Mr. Chairman just to make sure that we have got everything in terms of wording here. Beginning on page 3 Lisa, and you might have to decide Mr. Chairman, I think maybe we could just..., Rose is not here today, and Lisa did not do these minutes so I think we may need to give her a little time. But, I would suggest that maybe that I could go through these. Then maybe leave it with Rose to think about, two or three answers here that need to be evaluated and maybe come back at the end of the meeting then and finalize it unless you feel comfortable doing so.

PITTS: You have something specific that you want to mention?

FOSTER: Ok, on page 3, under Garcia something does not make sense there in the second line, it says, "just placed it at his way of picking". I have no idea what that means. This was a question Mr. Phillips that you were asking Garcia and he was trying to answer and I have no idea what that means. There are a few things in here that if a

Judge read them he may have some difficulty. Let me point these out. I would say that might be.

PITTS: I see what you are saying. There was quite a bit of ambiguity as I viewed his presentation and it was mentioned from the bench that perhaps total understanding wasn't going through, but if you see something that you think might have been possibly have been misinterpreted I am not too sure.

FOSTER: I do not think that will end the world there. But, I am just saying that there are several words in here that for example on page 10 under Mr. Phillips. Would you like to look Mr. Phillips, the upper paragraph it says on the third line "It is not on the property line according to the survey on the wrong placement here it says concrete wall". Something does not make sense.

PITTS: It says, "concrete wing wall".

FOSTER: I think there are some words out of place or something, so I would point that out.

DICKGRAFE: Bickley, what I might suggest that if you could note your comments or concerns we can get them to Rose and perhaps defer this until next meeting for approval with any questions, and then she can go back and re-listen to the tape. That should not affect anything pending across the street. Frankly, we got served today.

FOSTER: See some of these, they are not my wording....just a person reading it would notice that something does not make sense. How do you want to proceed Mr. Chairman, I have probably about eight of these.

PITTS: I think Sharon has brought up a good point. However, having said that it is not necessary that we speed through these things, but if you see something that may be ambiguous let's bring it out so that they can re-run the tape.

FOSTER: One of them is Lisa, where we talk about the 12 feet distance between and there is some wording that if the judge were reading it, I do not see how he could make any sense out of it. See what I mean. So I will mark these up and turn them over to Rose and come back next month.

PITTS: That is a good idea and those others of you may also want to go through that too.

FOSTER: We owe it to the applicant to do that and if anyone has anything else. I read the whole thing but other than that.

PITTS: Very well noted. Without objection we will delay the approval of these minutes until the following meeting.

DICKGRAFE: I think there needs to be a motion and a vote.

FOSTER moves and PHILLIPS seconds that the approval of the minutes for

March 28, 2000, be deferred until the next meeting so that the Secretary can further verify the minutes.

MOTION CARRIES 7-0.

PITTS: We did not go in order but we have been asked to anyhow because we are suppose to have a nomination for the 2nd Vice President today, I overlooked that step. The Chair will now entertain a motion to initiate that proceeding, the nomination of the 2nd Vice President. This position has been vacant since the recognition of someone or what happened?

VAN DE WATER: I am not certain.

FOSTER: Mrs. Swann wasn't it?

VAN DE WATER: I am not certain, it could have been.

FOSTER: Mr. Rogers, is 1st Vice-Chairperson.

PITTS: The Chair will entertain a motion for nomination for the position of 2nd Vice Chairman.

TIDEMANN moves RUANE seconds to nominate Randy Phillips.

PHILLIPS: No objection if that is the response.

ROGERS moves FOSTER seconds that the nominations be closed.

PITTS: All those in favor of Mr. Randy Phillips being the 2nd Vice Chairman of the BZA let it be known by the sound of voting "aye".

MOTION CARRIES 7-0.

PITTS: Case Number BZA 2000-00003 City of Wichita, Norman Jakovac and Bishop Gilkey.

VAN DE WATER PLANNING STAFF:

SECRETARY'S REPORT

CASE NUMBER: BZA2000-00003

OWNER/APPLICANT: City of Wichita, c/o Norman Jakovac; Bishop Gilkey

AGENT: Wilson Darnell Mann, P.A., c/o Chip Parker

REQUEST: Variance to allow a roof top building identification sign

CURRENT ZONING: "LC" – Limited Commercial

SITE SIZE: ±3 Acres

LOCATION: North of 21st Street North and east of Oliver

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant is requesting a variance for a roof top sign on a “mini-mall” building located in the University Gardens Community Unit Plan (CUP) located at the northeast corner of 21st Street North and Oliver. This building was originally constructed as a Dillon’s food market. Since that time the single occupant has vacated the site and the building has been partitioned into individual tenant spaces with the majority of the tenant spaces opening into a mall-type concourse.

The requested sign, if approved by the BZA, will be attached to grid-like architectural feature that has been constructed on the southwest corner of the existing building. The requested sign will have illuminated letters approximately 30 inches tall that spell out “University Plaza” on the west and south sides of the architectural feature. In addition to the identification sign, the structure will have an illuminated clock standing above the proposed sign.

The site has such a severe change in topography that the buildings are virtually invisible from the intersection of 21st Street North and Oliver. The proposed signage would provide increased visibility for the center from the intersection.

The University Gardens CUP was approved March 4, 1986. In that CUP, General Provision #2 stated: “Signs as permitted by zoning ordinance.” Signage requirements were removed from the Zoning Ordinance in 1990 when a separate Sign Code Ordinance was adopted.

Within the Sign Code Ordinance, roof top signs are only permitted by variance in the “GC” General Commercial, “LI” Limited Industrial, “CBD” Central Business District, and “GI” General Industrial districts. This variance request is outside of those guidelines, but permissible within the authority of the Board of Zoning Appeals as a variance from the specific terms of the City of Wichita Sign Code, since the Sign Code permits properties in CUPs to be treated differently than non-CUP properties.

ADJACENT ZONING AND LAND USE:

NORTH	“SF-6” and “B” – Tall Oaks apartments
SOUTH	“LC” – Dentist office, church and commercial uses (south of 21 st)
EAST	“LC” – retail and self-storage
WEST	“SF-6” – single-family residential

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the property is bermed on the west and south per the Community Unit Plan, and slopes down from the arterial streets. For persons traveling along 21st Street North, this prevents

visibility of the portion of the building that would normally be used for signage. The increased height of a roof-top sign will facilitate identification of this building.

ADJACENT PROPERTY: It is the opinion of staff the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch as this sign and mounting structure will serve to enhance the image of the building, which should make the site more appealing to potential tenants. Vacant buildings can increase the perception of blight to neighboring properties and potential occupants; improved signage should improve occupancy. Additionally, the lighting of the sign should not negatively impact nearby properties.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulation and C.U.P. constitutes an unnecessary hardship upon the applicant, inasmuch as the building signage permitted in the "LC" zoning district would not be adequate for the identification of this multi-tenant use.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the sign would facilitate better identification of this property for persons traveling along 21st Street North.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Community Unit Plan and the original zoning regulation, inasmuch as the requested signage would allow for identification of the use from 21st Street North.

RECOMMENDATION: Should the Board determine that conditions necessary to the granting of the variance exist, then it is the recommendation of the Secretary that the variance to allow a roof top sign be APPROVED, subject to the following conditions:

1. The applicant shall obtain all necessary permits for the installation of the approved sign.
2. The additional sign approved by this variance shall be placed on the southwest corner of the subject building, as indicated on the submitted elevation and plan drawings.
3. The additional sign approved by this variance shall be limited to a non-flashing internally-illuminated sign and shall conform to the submitted elevation drawing and sign design.
4. The sign shall be installed within one year or the resolution granting this variance shall become null and void.

VAN DE WATER: This is a request for a variance to allow a roof sign in the "LC" Limited Commercial Zoning District. By our sign code roof signs are permitted in "GC" and higher zoning districts by approval of this Board only. It doesn't refer to approving roof top signs in the "LC" zoning district. But, because this Board has the authority to vary regulations and stipulations in the sign code this becomes relevant for this Board to either approve or deny this variance.

(VAN DE WATER REVIEW SLIDES): I will back up a little bit. We are here at the corner of 21st and Oliver. If you have driven by, you have seen that this is a large commercial building here with several tenants, the corner building, which is the subject of this application, was originally built as a Dillon's grocery store and it has been vacant for some time. There is a development project underway to divide that space up into multi-tenants and use that space as somewhat of a mini-mall type use with multi-tenants. All exiting onto a shared corridor in the center.

There are some smaller commercial retail uses here and then a self-storage facility, a rather large facility on the far eastside. In the front of this property is a small one story Dentist office. I will show some pictures of that. As you can see this whole property here is part of a Community Unit Plan the University Garden CUP. General Provision #2 under that CUP states that signs are permitted by the zoning ordinance. When this original CUP was adopted, the sign code was indeed part of the Unified Zoning Code and since that time it has been removed as a separate ordinance but this Board still has the authority to, as I said before, vary specifications within that sign code.

Let me run through some slides real quick. This is an aerial view. This is the property in questions, this is the self-storage and these are the smaller retail stores in here. This is the Dentist office that I mentioned and in the Secretary's Report I talk about berms that have been put on this property, those exist along this property line to a larger extent and then along this property line at a lesser extent. Surrounding uses are Single Family Residential. There is a large apartment complex here and then more commercial uses south of 21st.

This is a site plan submitted by the applicant, again this is the building in question, north would be to your left. This is the location of the proposed roof sign to be attached to an architectural feature that I will show you pictures of. This is a schematic of the architectural feature that I talk about, the sign will be attached, or it is proposed to be attached to this feature both on the West and South sides. It is an "L" shaped feature and then a clock tower rising above that sign area. Again, a schematic of the sign in question.

These are 30-foot letters, sorry 30-inch letters, to be internally illuminated. This is an actual picture of the site, you can see this grid structure is already in place. This is looking north. The other retail uses of the facility and then the large self-storage area farther east. Large parking lot, looking farther east on 21st Street. This is the Dentist office, as you can see I am standing in the parking lot, it is uphill to where the Dentist office is sitting and that sits on the high portion of the berming that I spoke of in the Report. This is actually looking out onto the intersection, this is the intersection pole, these berms were built up all along this corner and from the parking lot, you can't see any of the cars at that intersection and I will show a shot from the intersection looking back at the building. Again, berming along the west, this is looking west, single-family residences across Oliver.

Looking back up north on Oliver. The multi-family apartments, you don't get a good picture of them here, they actually sit behind the building. This is on the south side of 21st looking back toward the subject property. Where a building sign would normally be

located would be on this wall that is behind this fencing here. The roof structure you can just barely see the architectural feature, where they want to put the sign is really the only part of that building that sticks up above ground level from north, I am sorry on the south side of 21st. This is the Dentist office, and then further down the self storage. Again this is on the south side of 21st looking north to the subject property, you can just see the top of the building there. This is just a picture of the intersection 21st and Oliver and then looking east on 21st Street.

Many of the issues that I brought up in those pictures speak to the five criteria that will have to be evaluated in denying or approving this variance. Uniqueness this property has a topography that is bermed on the street side. So, it is higher on the street side and lower on the building side. In other words, it slopes down from the arterial streets.

Hardship: in this case the sign code prevents, in our opinion, adequate identification for this structure at this location with those berms and topography that are present on the lot.

We feel that it falls in line with the spirit and intent of the sign code, which should allow for easy identification of commercial buildings along main arterial, which the roof-sign would do.

Staff is recommending approval of this subject to pretty standard conditions, that all necessary permits be gotten prior to installation. And that they develop the sign and the site according to the elevations and site plan that have been submitted with the application and that the sign be installed within one year of the signing of this resolution.

I would be happy to answer any questions that you have.

PITTS: Are there any questions from the bench of staff? Thank you very much. Is there anyone in the audience to speak in favor of the variance? Please approach the microphone and identify yourself.

NORMAN JAKOVAC CITY OF WICHITA PUBLIC WORKS AS PROJECT MANAGER OVERSEEING THIS PROJECT: I would just like to speak in favor of it. If you have any questions I would be glad to try and answer them.

ROGERS: Norman, the schematics that we were furnished with, unless I am reading these incorrectly, one of them shows the illuminated clock to be approximately 48 inches tall. And I believe the second one shows a 36-inch diameter of the clock so I am curious as to which one is correct.

JAKOVAC: I will have to refer to the architect to find out which one is correct.

AUDIENCE: It is 36 inches.

PITTS: 36 inches?

JAKOVAC: Yes sir.

ROGERS: No further questions.

PITTS: Any other questions?

PHILLIPS: Since this required a variance, I noticed the framework was up. Is that something we inherited or is that being constructed for this purpose?

JAKOVAC: Well, it was constructed for this purpose, and we got kind of ahead of ourselves. It was put up during the construction and we were behind on trying to get to the Board for the approval, I think it was more of a misunderstanding on our part of what had to happen and developing.

PHILLIPS: I am not real familiar with the project. This is City owned property?

JAKOVAC: We own the property and we are the developer and there is an agreement with Bishop Gilkey who will be taking over the property and actually doing the leasing of the tenant space.

PHILLIPS: Are we allowed monument signs in this location as well?

AUDIENCE: Yes.

PITTS: Any other questions for Norman from the bench? Are there others in the audience to speak in favor of the granting of the variance?

BISHOP GILKEY LEASING THE PROPERTIES ON 21ST AND OLIVER, a former Dillon's store: In the very beginning and I guess it was because of my ignorance that I did not understand that you couldn't have a structure or sign on top of the building. That was one of the most important things to me because the building is hid from 21st and Oliver. Since it is not a flourishing commercial area it needs some attraction. In speaking with the architect I said I have to have something that will attract the people's attention to try to bring them into this area and try to build this commercial area because if we can build it then that is jobs for people in that area. But, without the signage it is very difficult for people to realize we are there and it takes a lot of publishing etc.

I would appeal to you to consider allowing us to have the variance. Because, we need that attraction to try and bring people into that area and try to build a light commercial area. Without the signage it is going to be difficult for us to make the property and make the business work.

PITTS: Thank you, Mr. Bishop. Are there any questions from the bench for Bishop Gilkey? Are there any persons in the audience to speak in favor of the variance? Are there any to speak in opposition to the variance?

CHIP PARKER, ARCHITECT FOR WILSON, DARNELL, MANN: I would like to speak in favor of the variance. I am basically here to answer any questions?

PITTS: Does anyone have any questions for Chip? Thank you. Seeing no other person in the audience we will bring any future discussions back to the bench.

FOSTER: Lisa, are there any other signs for this shopping area that draws the attention to this location?

VAN DE WATER: Not for this use. There are building signs, the smaller retail uses and then the larger self-storage facility. But, there are no monument signs out on 21st and Oliver.

FOSTER: Mr. Chairman, I agree very much with Bishop Gilkey on this. I know this location and I have tried to find and often look to see if the Dillon's store is open when I come to the intersection and you can not see this well. I would like to strengthen the uniqueness part to Lisa's secretary's report if you would add a sentence here. Where it talks of the, after the first sentence, I think we could add "it has a substantial setback and a free standing building, near the intersection of 21st and Oliver which further reduces the visibility. And then on the next page under public interest, Mr. Chairman, at the very end, there is a house.

MILLER: Just a second.

FOSTER: The only residence involved there is right on that corner in the northwest corner has that curved driveway and it doesn't effect it. It faces actually 21st Street. So, I would add that no residence would be impacted at the end of the public interest. Unless there needs to be anymore discussion I would be prepared to make a motion Mr. Chairman, unless there is more discussion.

PITTS: Hearing no additional discussion, the Chair will entertain a motion.

FOSTER: Well, if I could find the sheet here.

FOSTER moves ROGERS seconds that the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in Section 2.12.590 (b) of the City code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the amended Secretary's Report.

MOTION CARRIES 7-0.

BZA RESOLUTION NO. 2000-00003

WHEREAS, City of Wichita, c/o Norman Jakovac; Bishop Gilkey; Wilson Darnell Mann, P.A., c/o Chip Parker, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to allow a roof top building identification sign on property zoned "LC" Limited Commercial and legally described as follows:

Lot 2, University Gardens 2nd Addition, Wichita, Sedgwick County, Kansas.
Generally located north of 21st Street North and east of Oliver.

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of April 25, 2000, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590(B), Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owners or the applicant. It is the opinion of staff that this property is unique, inasmuch as the property is bermed on the west and south per the Community Unit Plan, and slopes down from the arterial streets. Also, there is a substantial setback in addition to a freestanding building closer to the intersection that further reduces the visibility of the subject property. For persons traveling along 21st Street North, this prevents visibility of the portion of the building that would normally be used for signage. The increased height of a roof-top sign will facilitate identification of this building.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of staff the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch as this sign and mounting structure will serve to enhance the image of the building, which should make the site more appealing to potential tenants. Vacant buildings can increase the perception of blight to neighboring properties and potential occupants; improved signage should improve occupancy. Additionally, the lighting of the sign should not negatively impact nearby properties.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of staff that the strict application of the provisions of the zoning regulation and C.U.P. constitutes an unnecessary hardship upon the applicant, inasmuch as the building signage permitted in the "LC" zoning district would not be adequate for the identification of this multi-tenant use.

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the sign would facilitate better identification of this property for persons traveling along 21st Street North and no residents would be directly impacted.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Community Unit Plan and the original zoning regulation, inasmuch as the requested signage would allow for identification of the use from 21st Street North.

WHEREAS, each of the five conditions required by Section 2.12.590(b), Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that this request be approved for a variance to allow a roof top building identification sign on property zoned "LC" Limited Commercial and legally described as follows:

Lot 2, University Gardens 2nd Addition, Wichita, Sedgwick County, Kansas.
Generally located north of 21st Street North and east of Oliver.

RECOMMENDATION: Should the Board determine that conditions necessary to the granting of the variance exist, then it is the recommendation of the Secretary that the variance to allow a roof top sign be APPROVED, subject to the following conditions:

1. The applicant shall obtain all necessary permits for the installation of the approved sign.
2. The additional sign approved by this variance shall be placed on the southwest corner of the subject building, as indicated on the submitted elevation and plan drawings.
3. The additional sign approved by this variance shall be limited to a non-flashing internally-illuminated sign and shall conform to the submitted elevation drawing and sign design.
4. The sign shall be installed within one year or the resolution granting this variance shall become null and void.

PITTS: Report from Central Inspection regarding various cases.

MILLER: J.R. Cox, I believe is on vacation and so we will have to wait for the next go around.

PITTS: Anything else to come before the Board?

MILLER: One other item if we could, Mr. Foster had asked for some training. I think he had talked with Lisa, a couple of times and he thought maybe it might be appropriate if you got a minute to discuss it and get some sort of consensus from the rest of the Board. If that is your desire than we could work towards getting that accomplished. But, one of the things that he was particularly interested in was the sign code. The other one had to do with just how the findings, the criteria that we use for the findings are used and maybe it is best to let Bickley elaborate a little bit about that. I thought this might be the time to bring that up.

FOSTER: Mr. Chairman, we are having kind of short meetings here. It is 2:00 p.m. and we made a half-hour. If we had one-half hour more for training sometime I don't think that it would hurt and it might be helpful to us. For example, Mr. Kaplan, last time talked

about a court case and made a reference to it that I would know about it. I am not sure that he got the right City.

PITTS: Marion.

FOSTER: So, I am not sure what he mentioned. But, you recall that he started mentioning the five conditions, now I agree with him on four but not one of them, which was very key, the self-created part of it. I think that rather than have people appear for you rather in detail mentioning those things that it might be good to pick out two or three court cases that show how judges look at these five conditions and what does self-created mean? Can somebody go out and build something? Can they start what they did today and then come back? Is that a variance? I know the City Attorney was here on that case, we had some discussion over what self-created means, hardship, and I just thought it might be good and I also pointed out and I include myself I haven't read the full results of the sign code. We have new members here and I do not know whether you have ever even seen the document, you see. So I thought those two areas. We owe it to people who appear before us. Mr. Phillips probably knows the sign code probably better than anybody and I kind of rely on him in that regard.

PHILLIPS: I know a number of the sign companys. I have their phone numbers.

FOSTER: I remember something I was very impressed with when Keith Alter was on. I think it helps to know for example the present sign code was made because the heights were too high in the previous one and so there is a reason why people are coming back. Because it has been lowered but at the same time on K54 we have overpasses and it kind of explains. Lisa tells me why we get those kind of cases and what the direction of the City is.

One thing I would like to know more about each time I want to ask Dale is about the State Highway Department you know putting up these what do they call them these advertising signs?

MILLER: KDOT signs?

FOSTER: Yes, the KDOT signs. We get varying reports. I mean some people mentioned huge fees for them and some don't and I kind of rely on them sometime. Whether we need a sign if they can do that. But, I really question, we hear some pretty horrible fees that people have to pay not only the start up fees but monthly fees for those signs and I think we ought to know that.

PITTS: We wouldn't have any jurisdiction over that would we?

FOSTER: No, but, I think that when somebody appears before us and just says that they can't afford it. I think I would believe them better when I am aware of how much these signs are. Whether there is a hardship here for small business to start up business to do something like that. I would suggest that we start with either some signs or there are two or three good court cases. One of them was with, I think Mr. Kaplan was mentioning and we could get a copy and read ahead of time. I don't think it will hurt us and maybe

for a half an hour, I am not saying that we spend a lot of time it could just be whenever we have one case on the docket.

PITTS: I do not have any big problem with that at all. However having said that, we are a Citizen Board. As a Citizen Board, we are not expected to be experts in the field of Planning. You are an expert because that has been your vocation for years. I see nothing wrong with being totally knowledgeable of those things as to comment on and actually vote on. But, that knowledge I feel adequate information and materials are provided each member so that if they themselves feel that they need better understanding of it, I see no problems at all with them pursuing it. I don't really see any problem with asking staff to assist, but those of us that feel that we may not need to know that we just need to use more common sense as we debate the issues. We probably won't be sitting here partaking of any additional knowledge and there is certainly nothing wrong with knowledge. Knowledge is good.

FOSTER: Let me comment on that Mr. Chairman. I am rather reminded, having been appointed and re-appointed on this Board, each time I am told by the person appointing me that you make a final determination and this is probably as far as I know the only Board that the City has that does that. Does that seem right Dale as far as you know?

MILLER: Yes, Planning Commission is the final stop for some Conditional Uses and CUP amendments, only if it is not appealed.

FOSTER: All of these people don't appeal. Only if it is appealed does it go to the governing body. We sit as a quasi-judicial body. A little different role than any other Board in the City and that is why I think knowing how to do it is important. Also, the fact that these go on to court and if we can do the best job we can I know at least four cases now that have gone onto court in the time that I have been on for four years. They cost those people thousands of dollars. I think the better we can make a decision.... that last decision to me was pretty close game. I really thought out a lot of the pros and cons and what self-created means and what the factors meant. So I think the more we know about it the better determination could be made.

PHILLIPS: Let me ask this question. It sounds to me like you are talking about two things Bickley. I mean you were talking about training and now you are talking about additional information. Are you looking for both? Either, or?

FOSTER: I am just thinking more or less going over the factors and talking about what they really mean. We read them in the staff report, but, we really don't talk about what do they actually mean? What is the public interest, what is important?

PHILLIPS: Well, I think that is why at some point the testimony from the applicant and the opponents are closed and we are allowed to discuss that as a closed Board. To me that is the forum or the venue for that. Maybe we are not taking advantage of it enough but if that is your point.

FOSTER: Let me give you an example on that, what do we want to call it, the Smith case or the setback?

DICKGRAFE: Bickley, I want to caution you all, to be talking about a case that is in litigation at this point. If you are talking about the facts or what was rehashed or why you made decisions I am going to caution you not to do that. I think you are going to cause additional problems since that case has been appealed.

FOSTER: I agree with you, I am just saying that there are, there were things in that case that certainly lead one to more look at what the factors are. I think we ought to study them.

PHILLIPS: I think maybe just being a little proactive though in thinking and asking for that kind of information. I mean a lot of times I think staff will know, and maybe if they could give us a heads up. You had the last case there Mr. Chairman, without saying too much about it, but they had two attorneys, whichever way we went, we probably would end up being processed by the other one. We found that if we voted the other way, I think maybe the homeowners probably would have done something. I guess having served on this Board maybe longer than anybody here I have not been too unhappy about the results. I mean my first case was taken to court that I sat on. It really wasn't anything that the Board did, I think sometimes that is why we are here is to put something out so that people can react to it. I also think people raise pretty good issues. But, maybe the point is if we get a heads up on which ones are a little more sensitive like the one today to me that would seem pretty clean. There was a lot of good to be gained by that in a situation obviously where you have two litigants, I mean it is going to be kind of tough. Maybe we should spend a little more time up front. Maybe we should do that, I think we have an open forum here whenever the discussion is closed and confined to the Board I think maybe it is up to us, or important to you or Mr. Pitts, or whoever to generate it. I guess I don't find that we have been doing that bad of a job.

DICKGRAFE: If I can comment. I think that Lisa has a matrix that she has put together on the sign code that might just be helpful for a reference that when we get these, okay, what is allowed in this what is not allowed in this, what are we exactly changing from and to?

I certainly don't have a problem and there frankly aren't very many Kansas BZA cases out there. I mean putting together some synopsis for the new Board members here is the case law, but I guess I would tend to agree with Randy that a lot of these are really fact specific. I mean what evidence is in the record, what facts were presented, and do they justify a variance? I think Bickley's point is well taken that there are five or six factors, but you really have to apply those to the facts that are presented. I certainly, and staff will certainly accommodate the Board, however they want to do it. If there is a split that we don't want to have anything formal or a training session, you know maybe providing the information to you in a written form and then if we want to talk about it that is fine however you all want to handle it.

PHILLIPS: I am not opposed to any of this Bickley, don't take me wrong on that. The only thing that I am opposed to is I didn't go to school to become an attorney. I don't want to have to go through a bunch of case law from Michigan or Marion County or whatever because whichever one reviews somebody is going to quote something different. What is great about it now is that we do have an attorney here on the Board who can talk about that. I think we are well represented as far as a cross-section of the

industry here. I think if it is additional information that staff can and is capable of providing, I think it is great. I think maybe we should, as a point of discussion, maybe when we do close discussion maybe we should address those individually, if that is what you are saying, I am all for it. But, I would like to tell you I want to go back to school and try to become an attorney, but I don't have time for it.

RUANE: I think we can get what everybody wants here without really hitting the books and learn how to outline the cases and what not. I am drawing some inferences here, but Bickley, aren't you primarily wanting us to review and be acquainted with the standard and criteria that they are going to judge us by across the street? And really that is one or two cases maybe that we need.

FOSTER: What I am talking about is the five statutory things we read every time.

RUANE: And the recent interpretations rather than let the advocates or adversary give us each there <schpeal?>.

FOSTER: That's right, I have a feeling, there are probably different opinions of what some of those things mean. There are court cases that are defined then. I am a little bit handicapped by the moment because I

RUANE: I would like to have staff review that rather than have us labor and discuss those things. When we are deliberating a specific case that may or may not be appealed because if there is anything a judge will spin us around on is that they disagree with our comprehension of the law. It is a good way to keep ourselves appeal proof if we focus on being a quasi-judicial fact finding body and then at the end we cite what the factors are. But if we are discussing the finer points of the law on the record in regard to a particular item, I think that its going to give people more hooks in which to pull apart what we put together. I see removing it from the specific discussion is a good idea.

FOSTER: I am somewhat inhibited by Sharon's last remark which I agree, I would tell you a lot more but I can't. Okay. I do think that some training a half an hour or so talking about these factors can be useful for everybody.

RUANE: I am in for the training.

PHILLIPS: I am not opposed to it. I think to me let's make it discretionary, I mean there may be some, right now I am on a time crunch where thirty minutes of time can make a difference to me. In the future it may not be a problem, so as long as we are discretionary, if we can do that I think it is great. Allow it. Jim, and some of the others know law more than I do and when it comes to zoning ordinances I deal with them all the time so I am probably not going to look at that as hard because I am pretty comfortable with that.

PITTS: I do not think staff would have any problem, having said that, does staff or would staff any problem in putting together maybe 30 minute educational presentation at our next short meeting?

MILLER: That was our thought that we would wait until there was an Agenda that had fairly short under 30 minutes or so on whatever topic you thought were appropriate.

PHILLIPS: I agree with the sign code because the changes have created some misunderstanding and ambiguity.

FOSTER: We are making determinations off it.

PHILLIPS: Well, at the same time, I don't think that everybody is expected to come in here, read it, understand it, digest it. What I think we are ruling on is on findings of fact. The sign codes are a part of that, they either comply or don't comply and these are the reasons why and I think we are capable of doing that. I am not opposed to additional training at all I think the better educated we are the better we can serve. I just think, as a matter of fact, suggest that you sit here and go through all of the zoning ordinances with us. Bickley because you know them backwards, and forwards, if we can make it discretionary allow that and if it is available for us I think it is great.

PITTS: Okay, I think staff has agreed as I read it to put some presentation together for us and we will see how that works out and go from there. Is that all right Mr. Foster?

FOSTER: I just wonder if Randy would have a moment before he leaves, there are two or three words here.

PHILLIPS: I want to make sure we get it right.

PITTS: You mean after we close the meeting?

FOSTER: You can close the meeting.

PITTS: Is there any other business to come before the body? No other additional business and the Board of Zoning Appeals now adjourned.